

CLIENT ALERT: Rhode Island Establishes Paid Sick Leave Law - By Maura McLaughlin and Stephanie Merabet

On September 28, 2017, Rhode Island enacted the Healthy and Safe Families and Workplace Act (the "Act"), mandating "paid sick and safe leave time" for covered employers. Although it is convenient to refer to "sick leave," the Act permits employees to use protected leave for a list of reasons beyond the employee's sickness, including family care. The law goes into effect on July 1, 2018.

Paid Earned Sick Leave: Starting July 1, 2018, employers with 18 or more employees will be required to allow all employees to accrue and use paid leave – up to 24 hours in 2018, 32 hours in 2019, and 40 hours in 2020 and thereafter. Employees will incrementally accrue one hour of paid sick leave for every 35 hours worked, up to the maximum allotted for that year. Exempt employees under the federal Fair Labor Standards Act are presumed to work 40 hours per week for accrual purposes, unless their typical work week is fewer than 40 hours. The Act explicitly allows employers to provide more leave than required by the law.

Instead of tracking leave accrual, employers can provide the full allotment at the beginning of each calendar year, or follow schedules set out in the Act for lump sums of leave to be provided based on an employee's average weekly hours worked. The Act allows employees to carry over their earned, unused, paid sick leave to the next calendar year, but employees cannot use more leave than the fixed maximum amount for that calendar year. In lieu of carryover, employers may compensate employees for unused, earned paid sick leave at the end of each calendar year, but there is no requirement to pay out unused paid sick leave upon termination. Employers whose paid time off exceeds the Act's requirements are exempt from statutory accrual, carry-over, and payout provisions, as long as they permit employees to use the time for the reasons set forth in the Act.

Covered Rhode Island employees will begin accruing sick leave on July 1, 2018, or their first day of employment, whichever is later. New employees will begin to accrue leave immediately after hire, but employers may impose a waiting period of up to 90 days before the leave can be used. The Act permits longer waiting periods for seasonal employees of 150 days, and temporary employees of 180 days.

Covered Purposes: The Act permits employees to use their accrued paid sick leave:

- To care for their own mental or physical illness, injury, or health condition, including diagnosis, treatment, or preventative care;
- To care for a family member's mental or physical illness, injury, or health condition, including diagnosis, treatment, or preventative care;
- If the employee's place of business or a child's school or child care closes due to a public health emergency;
- To provide for the employee's own care or that of a family member, if health authorities have identified that their exposure to a communicable disease may jeopardize the health of others; or
- If the employee or family member is a victim of domestic violence, sexual assault, or stalking.

"Family member" is broadly defined and includes an employee's child, parent, spouse, mother-in-law, father-in-law, grandparents, grandchildren, domestic partner, sibling, "care recipient," and "members of the employee's household." A "care recipient" is "a person for whom the employee is responsible for providing or arranging health or safety related care," which includes routine or preventative care, and also includes ensuring safety following domestic violence, sexual assault or stalking. The Act

does not clarify how to define a “member of the employee’s household.”

Employers of Fewer than 18 Employees: Employers with fewer than 18 employees are not entirely exempt. These smaller employers cannot take any action against an employee for using time off for any of the covered purposes, in amounts equal to the paid time off required for larger employers (24 hours in 2018, 32 hours in 2019, and 40 hours in 2020). In practice, this may mean that smaller employers must allow *unpaid* leave under the same circumstances permitted under the Act. (The Rhode Island Department of Labor and Training will establish guidelines or regulations that may clarify this and other aspects of the law.)

Exemptions from Leave Requirement: An employer is not required to provide any paid sick and/or safe leave time to any employees that are employed by a municipality or the state. The Act also provides that construction industry employers are not required to provide any paid sick and/or safe leave time “to any employees that work under a collective bargaining agreement until July 1, 2018.” The Act does not provide any additional detail about this exemption or how it will be applied; this may be another area of the law which will be clarified by future guidelines or regulations. In addition, leave does not need to be provided to licensed nurses who are employed by a health care facility but who are not obligated to work a regular schedule, who only work when they indicate availability to work and do not have any obligation to work, and who receive higher pay than other employees of the same healthcare facility who perform the same job on a regular schedule.

Procedures for Using Earned Sick Leave: Employees must request to use earned sick leave as soon as practicable by means specified by the employer, or if there is no policy, in writing, orally, or by electronic means. If possible, the employee must disclose the expected length of absence and make reasonable efforts to use sick leave in a manner that does not unduly disrupt the employer’s operations. The employee ultimately determines how much sick time to use, but the employer may establish a minimum increment capped at no more than four hours per day, and reasonable under the circumstances.

The Act restricts the employer’s ability to request supporting documentation for an employee’s covered absence. If the leave is for more than three consecutive work days, employers can request documentation about the purpose, but only if the employer notified the employee of this requirement, in writing, in advance of the use of leave. Employers requiring documentation about the purpose for the leave are not permitted to require details relating to domestic violence, sexual assault, stalking, or details about the employee’s or their family member’s health information. If the employer possesses such information, it must be kept confidential and not disclosed except to the affected employee or with the permission of the affected employee, unless required by existing regulation or statute.

Employers who violate the Act will be subject to monetary fines for each day found to be in violation.

MBJ will continue to monitor this Act and provide updates, as appropriate. In the meantime, employers are encouraged to contact their MBJ attorney to ensure compliance with the Act and the patchwork of state and municipal specific sick leave laws.

Maura McLaughlin and Stephanie Merabet are attorneys at Morgan, Brown & Joy, LLP, and may be reached at 617-523-6666 or mmclaughlin@morganbrown.com and smmerabet@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was originally published on October 19, 2017.

This publication, which may be considered advertising under the ethical rules of certain jurisdictions, should not be construed as legal advice or a legal opinion on any specific facts or circumstances by Morgan, Brown & Joy, LLP and its attorneys. This newsletter is intended for general information

purposes only and you should consult an attorney concerning any specific legal questions you may have.